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10/799,383	03/12/2004	James C. Glasgow	1359-002	7285

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,383

Applicant(s)

GLASGOW, JAMES C.

Examiner

Michael C Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-20, and 22-31 are rejected under 35 U.S.C. 102(b) as being anticipated by

Browne US Patent Number 5,598,849.

The examiner's interpretation of the "fitness system computer" is such that the computer can be handheld and is portable, since it can be moved. *See figures 1-5, and columns 1-7.*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-19, and 24-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault

US Patent Number 6,478,736 A.

Claim 1. A hand-held device for use in personal training and fitness evaluation comprising:

a portable device (*fig. 5, 52 computing device, shown as a PDA*) including a memory, a microprocessor, a power source, input/output interface for a user to input data and view outputs

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including results from processing the input data according to predetermined formulas relating to personal training and fitness for at least one individual;

software capable of running on the device for automatically calculating predetermined, select formulas associated with factors relevant to at least one individual's physical fitness.

(software is shown in figures 7-12, these include automatic outputs via the processor, which are capable of printed out, wherein formulas regarding activity and calories consumed and expended as well as weight loss and body fat percentage loss, including daily and weekly trends as well as time remaining to reach particular goals.)

Claim 2. The device of claim 1, wherein the device is capable of automatically generating the outputs. *(figures 7-12)*

Claim 3. The device of claim 1, wherein the outputs are capable of being provided in a printable format for providing a hard copy. *(a PDA is capable of printing out a hard copy)*

Claim 4. The device of claim 1, wherein the software includes the formulas in an executable format when data is input by the user for the automatic calculation of select, predetermined factors relevant for an individual's fitness evaluation and testing. *(software is shown in figures 7-12, these include automatic outputs via the processor, which are capable of printed out, wherein formulas regarding activity and calories consumed and expended as well as weight loss and body fat percentage loss, including daily and weekly trends as well as time remaining to reach particular goals.)*

Claim 5. The device of claim 1, wherein the outputs are diagnostic physical fitness indicators.

(figures 7-12, particularly 8B, 11A, 11B, 12C)

Claim 6. A method for use in personal training and fitness evaluation comprising the steps of:

providing a handheld device of claim 1;

the user inputting data relating to an individual person; *(see figures 7A and 7B)*

the device providing outputs including predetermined factors relevant for an individual's fitness evaluation and testing. *(figures 8B, 11A, 11B, 12C)*

Claim 7. The method of claim 6, further including the step of the device providing automatic calculation of the predetermined factors as outputs relevant for an individual's fitness evaluation and testing. *(figures 8B, 11A, 11B, 12C, processing is automated by the processor of the PDA)*

Claim 8. The method of claim 6, further including the step of the device outputting the factors in a readable and/or printable format. *(figures 8B, 11A, 11B, 12C)*

Claim 9. The method of claim 6, further including the step of the user viewing the outputs on a user interface. *(figures 8B, 11A, 11B, 12C)*

Claim 10. The method of claim 6, further including the step of storing the outputs in an electronic memory or database. *(figures 8B, 11A, 11B, 12C, display shows stored data from*

memory of PDA, see also column 10, lines 31-36)

Claim 11. The method of claim 10, wherein the stored outputs are capable of being stored on the device or on removable computer readable medium. *(figures 8B, 11A, 11B, 12C, display shows stored data from memory of PDA)*

Claim 12. The method of claim 6, further including the step of the user comparing the outputs to prior output information relating to the same individual person being evaluated. *(figure 12C)*

Claim 13. The method of claim 6, wherein the device is a hand-held computer-type device used to store the formulas in an executable format when data is input by the user for the automatic calculation of select, predetermined factors relevant for an individual's fitness evaluation and testing. *(figures 7-12, illustrate the functions of the device which include storing formula's needed to display measurements of the user)*

Claim 14. The method of claim 6, including a step of inputting information into the device during a physical fitness diagnostic testing, training, or personal training session. *(Mault teaches inputting information into the PDA via a calorimeter. A calorimeter is a device used in physical fitness diagnostic testing. Secondly, Mault teaches a weight control program that includes activities for energy expenditure, those activities may be considered training.)*

Claim 15. The method of claim 6, further including a step of the device automatically

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differentiating between various information inputted during questionnaire that is pertinent in calculating proper equations based on specific tests performed but not limited to baseline data and test evaluation results. *(see the starting values point in figure 6 and illustrated in figure 7, show a space for "weight". The entered weight is synonymous with an answer/information input in a questionnaire. At least this data is used in a calculation for weight loss in body trend summary, fig 12C)*

Claim 16. The method of claim 6, further including a step of the device automatically determining proper calculation of specific equations regarding tests required to aid, determine, and develop improved results for the individual. *(see Fig 12C, particularly, the start weight date, target weight date, and "to go".)*

Claim 17. The method of claim 6, further including a step of providing explanations for test results in both common and scientific language. *(the numbers, graphs, and illustrations in figures 7-12 are both common and scientific forms of communication)*

Claim 18. The method of claim 6, further including a step of determining results based on an integrated data set including but not limited to input data entered and obtained from client's fitness evaluation in real-time. *(see fig 11B and 12C)*

Claim 19. The method of claim 18, wherein the integrated data set further includes prior outputs from equations and/or historical database information. *(see fig 11B and 12C)*

Claim 24. The method of claim 6, further including a step of transporting and recording data throughout a workout location or facility while testing of the individual is in progress by the user using the device. *(fig. 14, the path which the runner is running is his workout location and he is being tested while running)*

Claim 25. The method of claim 6, further including a step of maintaining a database of individual user records by individuals evaluated. *(column 10, lines 22-65)*

Claim 26. The method of claim 6, further including a step of producing graphical outputs on a graphical user interface of the device to illustrate progress with individuals over time. *(figure 11B, 12C)*

Claim 27. The method of claim 26, wherein the progress is considered from a preceding evaluation to a subsequent evaluation and/or a preceding workout to a subsequent workout. *(figure 11B, 12C)*

Claim 28. The method of claim 26, wherein the progress is capable of being considered over a predetermined time period, the time period being selectable by the user and indicated by user inputs to the device. *(figures 7-12, daily or weekly)*

Claim 29. The method of claim 6, further including a step of producing tangible outputs in

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computer readable medium or printable hardcopies format. *(figures 7-12, inherent that data is stored in a computer readable medium by displaying data)*

Claim 30. The method of claim 6, further including a step of functioning in conjunction with and/or communicating with other computerized equipment for exercise and/or testing, computers and/or networked computers computer systems. *(see figure 15, and column 10, lines 22-65)*

Claim 31. A hand-held computer-type device for use in personal training comprising:

a hand-held computer *(fig. 5, 52 computing device, shown as a PDA)* having memory, a microprocessor, a power supply, a user interface having input/output capability;

formulas in an executable format stored on the device; *(inherent via figures 7-12)*

input data provided by a user relating to an individual; *(figures 6, 7A and 7B)* and

the input data being processed by the formulas to produce output factors viewable on the user interface, the factors being relevant for an individual's fitness evaluation and testing.

(figures 8B, 11A, 11B, and 12C, particularly the body fat measurements)

5. Claims 1-22, 25-29 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Holland US Patent Number 6,607,483.

Note to applicant: Holland does not explicitly disclose a hand-held computer, however Holland does disclose, "In order to monitor the different training levels and provide an comprehensive tracking and monitoring system, the present invention utilizes a database structure and program on a computer system. The computer system is a standard desktop setup with processor, memory, screen display, inputs, outputs, printer connections and other characteristics as is well known in the art." The examiner's interpretation of the

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“desktop computer” is such that a desktop computer can be handheld and is portable, since it can be moved.

Holland also discloses, “The present system may be implemented in a program platform or language, and is shown in a Microsoft Windows.TM. type operating software environment.” For applicant’s future reference, the Microsoft Windows.TM. operating software works the same on a laptop computer as a desktop computer. A laptop computer fits a more traditional definition of a “hand held device”, this assertion does not in anyway hinder the rejection of the rejected claims below on novelty, because as stated above a desktop computer is a handheld device which is portable.

Claim 1. A hand-held device for use in personal training and fitness evaluation comprising: a portable device including a memory, a microprocessor, a power source, input/output interface for a user to input data and view outputs including results from processing the input data according to predetermined formulas relating to personal training and fitness for at least one individual; software capable of running on the device for automatically calculating predetermined, select formulas associated with factors relevant to at least one individual's physical fitness. Holland discloses, “In order to monitor the different training levels and provide an comprehensive tracking and monitoring system, the present invention utilizes a database structure and program on a computer system. The computer system is a standard desktop setup with processor, memory, screen display, inputs, outputs, printer connections and other characteristics as is well known in the art.”

In regards to claims 2-5, 8-11, and 28 see (*figures 1-26*)

Claim 6. A method for use in personal training and fitness evaluation comprising the steps of:

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providing a handheld device of claim 1; the user inputting data relating to an individual person; the device providing outputs including predetermined factors relevant for an individual's fitness evaluation and testing. (*see abstract*)

Claim 7. The method of claim 6, further including the step of the device providing automatic calculation of the predetermined factors as outputs relevant for an individual's fitness evaluation and testing. (*fig. 11, "1134"*)

Claim 12. The method of claim 6, further including the step of the user comparing the outputs to prior output information relating to the same individual person being evaluated. (*fig. 1, "124"*)

Claim 13. The method of claim 6, wherein the device is a hand-held computer-type device used to store the formulas in an executable format when data is input by the user for the automatic calculation of select, predetermined factors relevant for an individual's fitness evaluation and testing. (*fig. 11, "1134"*)

Claim 14. The method of claim 6, including a step of inputting information into the device during a physical fitness diagnostic testing, training, or personal training session. (*see abstract*)

Claim 15. The method of claim 6, further including a step of the device automatically differentiating between various information inputted during questionnaire that is pertinent in calculating proper equations based on specific tests performed but not limited to baseline data

and test evaluation results. see *(figures 1-26)*

Claim 16. The method of claim 6, further including a step of the device automatically determining proper calculation of specific equations regarding tests required to aid, determine, and develop improved results for the individual. *(fig. 11, "1134")*

Claim 17. The method of claim 6, further including a step of providing explanations for test results in both common and scientific language. *("numbers" are common and scientific)*

Claim 18. The method of claim 6, further including a step of determining results based on an integrated data set including but not limited to input data entered and obtained from client's fitness evaluation in real-time. see *(figures 1-26)*

Claim 19. The method of claim 18, wherein the integrated data set further includes prior outputs from equations and/or historical database information. *(column 1, lines 25-67)*

Claim 20. The method of claim 6, further including a step of applying fitness evaluation results to resistance training and cardiovascular training programs as well as fitness evaluation test results. *(figures 14-17)*

Claim 21. The method of claim 6, further including a step of describing safe and proper testing protocols and/or effective exercises to be performed during resistance and cardio training for

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effecting improvements based upon the outputs and individual's goals information input. *(column 4, lines 8-44, the recited limitation is synonymous with the use of a coach and fitness consultant)*

Claim 22. The method of claim 6, further including a step of comparing between non-exercise/test results with actual measurements performed during evaluation, the comparison being made automatically by the device and viewable by the user. *(figure 11 and 24)*

Claim 25. The method of claim 6, further including a step of maintaining a database of individual user records by individuals evaluated. *(column 1, lines 25-67)*

Claim 26. The method of claim 6, further including a step of producing graphical outputs on a graphical user interface of the device to illustrate progress with individuals over time. *(fig. 1, "124")*

Claim 27. The method of claim 26, wherein the progress is considered from a preceding evaluation to a subsequent evaluation and/or a preceding workout to a subsequent workout. *(fig. 1, "124")*

Claim 29. The method of claim 6, further including a step of producing tangible outputs in computer readable medium or printable hardcopies format. *see (figures 1-26)*

Claim 31. A hand-held computer-type device for use in personal training comprising: a hand-

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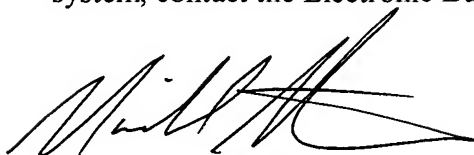
held computer having memory, a microprocessor, a power supply, a user interface having input/output capability; formulas in an executable format stored on the device; input data provided by a user relating to an individual; the input data being processed by the formulas to produce output factors viewable on the user interface, the factors being relevant for an individual's fitness evaluation and testing. (*see abstract, and figures 1-26*)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Astorino
May 16, 2005